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April 28, 2022

Via ECF

Honorable Paul A. Engelmayer
United States District Court
United States Courthouse
Southern District of New York
40 Foley Square
New York, NY 10007

Re: JMB Shipping ATB 284, LLC, et al. v. Unico Marine Services LLC
Case No. 22-mc-00067-PAE

Dear Judge Engelmayer:

We represent Defendant Unico Marine Services LLC (“Unico Marine”).

To supplement the April 22, 2022 letter submitted to this Court addressing the Order of Attachment and seeking vacatur of same, *ECF No. 16*, we now submit this letter on Unico Marine’s behalf to notify the Court of the contrasting positions taken by Plaintiffs. More specifically, Unico Marine wishes to advise the Court of the fact that three days after Plaintiffs resumed proceedings in this Court—an act in violation of the preliminary injunction issued by Judge Kuntz in the proceeding in the Eastern District—they appealed Judge Kuntz’s preliminary injunction Order, necessarily conceding that it remains in force and effect. Therefore, Plaintiffs’ April 8, 2022 letter motion to this Court was made in knowing violation of that Order.

Plaintiffs’ knowledge and understanding of the continuing force and effect of Judge Kuntz’s preliminary injunction Order is evident from the fact that, on April 11, 2022—three days after the Plaintiffs asked this Court to take their Motion to Confirm out of abeyance—, they filed a notice of appeal from the Order, thereby conceding that it remained valid and effective, as no appeal may be taken from an injunction that is no longer in effect.¹ *See, e.g. Video Tutorial Servs. v. MCI Telcoms. Corp.*, 79 F.3d 3, 5–6 (2d Cir. 1996) (holding that an interlocutory appeal from a preliminary order “is the paradigm of a moot appeal” and that such an appeal must be dismissed as the Court of Appeals has “no jurisdiction over moot controversies”). Furthermore, Plaintiffs have reaffirmed their knowledge and understanding of the continuing force and effect of Judge Kuntz’s preliminary injunction Order by virtue of the fact that they have continued to prosecute

¹ The appeal bears Docket Number 22-579. A copy of the Docket Sheet is attached hereto as Exhibit A, evidencing that the Plaintiffs have continued, as of April 26, 2022, to prosecute the appeal.

the appeal, clearly evidencing that they believe there remains a justiciable issue over which the Second Circuit may exercise its jurisdiction, *i.e.* Plaintiffs, rightly, believe that the preliminary injunction Order continues to be in force and effect. Otherwise their appeal would be moot and they would have no basis for continuing to prosecute said appeal.

Plaintiffs have misled this Court not only about the status of the proceedings in the Eastern District and the continuing force and effect of Judge Kuntz's preliminary injunction Order, but they have failed to apprise the Court that they clearly recognize and acknowledge the continuing effectiveness of the preliminary injunction Order by appealing it to the Second Circuit. Otherwise, as mentioned above, if the injunction were not in continuing force and effect, the appeal would be moot and the Second Circuit would lack jurisdiction.

Based on the foregoing, and the arguments laid out in the April 22, 2022 letter, *ECF No. 16*, we respectfully request that your Honor vacate the Order of Attachment.

Respectfully submitted,

Lennon, Murphy & Phillips, LLC



By: _____

Patrick F. Lennon

Kevin J. Lennon

Keith W. Heard

Steven R. Winters

cc: All Counsel of Record (*Via ECF*)

Exhibit A

Exhibit A

General Docket
Court of Appeals, 2nd Circuit

Court of Appeals Docket #: 22-759 Nature of Suit: 3120 CONTRACT-Marine Glander International Bunkerin v. M/V Teresa Appeal From: EDNY (BROOKLYN) Fee Status: Paid		Docketed: 04/11/2022								
Case Type Information: 1) Civil 2) Private 3) -										
Originating Court Information: District: 0207-1 : 21-cv-6830 Trial Judge: William F Kuntz, II, U.S. District Judge Trial Judge: Taryn A. Merkl, U.S. Magistrate Judge Date Filed: 12/09/2021 <table style="width: 100%;"> <tr> <td>Date Order/Judgment:</td> <td>Date Order/Judgment EOD:</td> <td>Date NOA Filed:</td> <td>Date Rec'd COA:</td> </tr> <tr> <td>03/11/2022</td> <td>03/11/2022</td> <td>04/11/2022</td> <td>04/11/2022</td> </tr> </table>			Date Order/Judgment:	Date Order/Judgment EOD:	Date NOA Filed:	Date Rec'd COA:	03/11/2022	03/11/2022	04/11/2022	04/11/2022
Date Order/Judgment:	Date Order/Judgment EOD:	Date NOA Filed:	Date Rec'd COA:							
03/11/2022	03/11/2022	04/11/2022	04/11/2022							
Prior Cases: 22-392 Date Filed: 02/28/2022 Date Disposed: 04/12/2022 Disposition: FRAP 42 P Stipulation with prejudice										
Current Cases: None										
Panel Assignment: Not available										

Glander International Bunkering Inc. Plaintiff	
E.N. Bisso & Son, Inc. Plaintiff-Intervenor	
Martin Product Sales, DBA Martin Asphalt Company Plaintiff-Intervenor	
Norton Lilly International, Inc., Plaintiff-Intervenor	
Buck Kreihs Marine Repair, LLC Plaintiff-Intervenor	
Gulf Copper & Manufacturing Corporation Plaintiff-Intervenor	

M/V Teresa Defendant - Appellee	Patrick F. Lennon, Esq., Litigation Counsel Direct: 203-256-8600 [COR NTC Retained] Lennon, Murphy & Phillips, LLC 1599 Post Road East Westport, CT 06880
BARGE BG ACADIA (O.N. 1049252), in rem Defendant - Appellee	Patrick F. Lennon, Esq., Litigation Counsel Direct: 203-256-8600 [COR NTC Retained] (see above)
Unico Marine Services LLC Defendant - Appellee	Patrick F. Lennon, Esq., Litigation Counsel Direct: 203-256-8600 [COR NTC Retained] (see above)

JMB Shipping ATB 284, LLC Intervenor - Appellant	Rachel Maimin, Assistant U.S. Attorney Direct: 212-419-5876 [COR NTC Retained] Lowenstein Sandler LLP

1251 Avenue of the Americas
New York, NY 10020

JMB Shipping ATB 220
Intervenor - Appellant

Rachel Maimin, Assistant U.S. Attorney
Direct: 212-419-5876
[COR NTC Retained]
(see above)

JMB Shipping ATB 205
Intervenor - Appellant

Rachel Maimin, Assistant U.S. Attorney
Direct: 212-419-5876
[COR NTC Retained]
(see above)

Bahamas Maritime Logistics Services Ltd.
Intervenor

GMD Shipyard Corp.
Intervenor

JMB Shipping ATB 284, LLC, JMB Shipping ATB 220, JMB Shipping ATB 205,

Intervenors- Plaintiffs-Appellants,

E.N. Bisso & Son, Inc., Martin Product Sales, DBA Martin Asphalt Company, Norton Lilly International, Inc., Buck Kreihs Marine Repair, LLC, Gulf Copper & Manufacturing Corporation,

Intervenors-Plaintiffs,

Glander International Bunkering Inc.,

Plaintiff,

v.

M/V Teresa, BARGE BG ACADIA (O.N. 1049252), in rem, Unico Marine Services LLC,

Defendants - Appellees,

Bahamas Maritime Logistics Services Ltd., GMD Shipyard Corp.,

Intervenors,

Forefront Emergency Management, LP, Rio Marine, Inc.,

Claimants.

04/11/2022	<input type="checkbox"/> 1 19 pg, 280.51 KB	NOTICE OF CIVIL APPEAL, with district court docket, on behalf of Appellant JMB Shipping ATB 205, JMB Shipping ATB 220 and JMB Shipping ATB 284, LLC, FILED. [3295880] [22-759] [Entered: 04/13/2022 10:09 AM]
04/11/2022	<input type="checkbox"/> 2 15 pg, 61.9 KB	DISTRICT COURT ORDER, entered in the district court dated 03/11/2022, RECEIVED.[3295890] [22-759] [Entered: 04/13/2022 10:15 AM]
04/11/2022	<input type="checkbox"/> 4 18 pg, 336.06 KB	ELECTRONIC INDEX, in lieu of record, FILED.[3295894] [22-759] [Entered: 04/13/2022 10:16 AM]
04/25/2022	<input type="checkbox"/> 5 1 pg, 75.36 KB	FORM D, on behalf of Appellant JMB Shipping ATB 205, JMB Shipping ATB 220 and JMB Shipping ATB 284, LLC, FILED. Service date 04/25/2022 by CM/ECF.[3303151] [22-759] [Entered: 04/25/2022 04:46 PM]
04/25/2022	<input type="checkbox"/> 6 28 pg, 677.68 KB	FORM C, on behalf of Appellant JMB Shipping ATB 205, JMB Shipping ATB 284, LLC and JMB Shipping ATB 220, FILED. Service date 04/25/2022 by CM/ECF.[3303227] [22-759] [Entered: 04/25/2022 11:24 PM]
04/25/2022	<input type="checkbox"/> 7 2 pg, 162.06 KB	ACKNOWLEDGMENT AND NOTICE OF APPEARANCE, on behalf of Appellant JMB Shipping ATB 205, JMB Shipping ATB 220 and JMB Shipping ATB 284, LLC, FILED. Service date 04/25/2022 by CM/ECF. [3303229] [22-759] [Entered: 04/25/2022 11:31 PM]
04/26/2022	<input type="checkbox"/> 8	PAYMENT OF DOCKETING FEE, on behalf of Appellant JMB Shipping ATB 205, JMB Shipping ATB 220 and JMB Shipping ATB 284, LLC, district court receipt # ANYEDC-15505238, FILED.[3303418] [22-759] [Entered: 04/26/2022 10:12 AM]
04/26/2022	<input type="checkbox"/> 9 19 pg, 340.19 KB	SUPPLEMENTAL EELECTRONIC INDEX, in lieu of record, FILED.[3303643] [22-759] [Entered: 04/26/2022 12:30 PM]
04/26/2022	<input type="checkbox"/> 10 1 pg, 271.46 KB	ACKNOWLEDGMENT AND NOTICE OF APPEARANCE, on behalf of Appellee Unico Marine Services LLC, FILED. Service date 04/26/2022 by CM/ECF.[3304084] [22-759] [Entered: 04/26/2022 05:02 PM]